



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 28650255

Date: OCT. 24, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a medical and health care manager and entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver of the required job offer, and thus of a labor certification, when it is in the national interest to do so.

The Director of the Nebraska Service Center denied the petition. The Director concluded that the record did not demonstrate the Petitioner's eligibility for the requested national interest waiver. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(B)(i) of the Act. An advanced degree is any U.S. academic or professional degree or a foreign equivalent degree above that of a bachelor's degree.¹ 8 C.F.R. § 204.5(k)(2). A U.S. bachelor's degree or a foreign equivalent degree followed by five years of progressive experience in the specialty is the equivalent of a master's degree. *Id.*

Once a petitioner demonstrates eligibility for the underlying classification, the petitioner must then establish eligibility for a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act. While neither the statute nor the pertinent regulations define the

¹ Profession shall include, but not be limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Section 101(a)(32) of the Act.

term “national interest,” Matter of Dhanasar, 26 I&N Dec. 884, 889 (AAO 2016), provides the framework for adjudicating national interest waiver petitions. Dhanasar states that USCIS may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates that:

- The proposed endeavor has both substantial merit and national importance;
- The individual is well-positioned to advance their proposed endeavor; and
- On balance, waiving the job offer requirement would benefit the United States.

II. ANALYSIS

The Petitioner proposes to work in the United States as a medical and health services manager for a new sports medicine services clinic she proposes to establish in Florida, New Jersey, and California. She earned the title of doctor of medicine from Universidade [REDACTED] in Brazil in 2007 and has worked as a doctor in Brazil.

The Director’s decision did not indicate whether the Petitioner established her eligibility for the underlying EB-2 immigrant classification. However, the Director stated in a request for evidence notice that the Petitioner qualifies for the EB-2 classification as a member of the professions holding an advanced degree. Upon de novo review, the record shows that the Petitioner is eligible for the underlying classification as an advanced degree professional.³

The question on appeal is whether the Petitioner demonstrated a waiver of the labor certification would in the national interest. The Director found that while the Petitioner demonstrated the proposed endeavor has substantial merit, she did not establish that the proposed endeavor is of national importance, as required by the first Dhanasar prong. The Director further found that the Petitioner did not establish that she is well positioned to advance the proposed endeavor, and that, on balance, it would be beneficial to the United States to waive the requirements of a job offer, and thus of a labor certification. Upon de novo review, we agree with the Director’s determination that the Petitioner did not demonstrate that a waiver of the labor certification would be in the national interest.⁴

The first prong of the Dhanasar analytical framework, substantial merit and national importance, focuses on the specific endeavor that a petitioner proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas, such as business, entrepreneurialism, science, technology, culture, health, or education. In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” Matter of Dhanasar, 26 I&N Dec. at 889.

The Petitioner proposes to establish a sports medicine services business for which she would be its medical and health services manager. The business plan states that the Petitioner will establish the

² See also *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

³ To demonstrate she is an advanced degree professional, the Petitioner submitted her diploma, her academic transcript, and an academic evaluation. The record demonstrates that she holds the foreign equivalent of a degree above that of a U.S. bachelor’s degree. See 8 C.F.R. § 204.5(k)(3).

⁴ While we may not discuss every document submitted, we have reviewed and considered each one.

business offices in underutilized business communities of Florida, New Jersey, and California. The business would focus on the sports medicine market and provide small business' with multi-disciplinary medical appointment services, counseling services, physical therapy sessions, and acupuncture sessions. We agree with the Director that the Petitioner's endeavor has substantial merit.

Even though the Petitioner's proposed endeavor has substantial merit, the Director indicated that the Petitioner did not provide details of her proposed endeavor showing it will have potential prospective impact. Therefore, the Director found the record did not establish the national importance element of the first prong of the Dhanasar framework.

The Petitioner contends on appeal that the Director did not apply the proper standard of proof, instead imposing a stricter standard, and erred by not giving "due regard" to the evidence submitted, specifically the Petitioner's resume outlining her experience; her business plan and professional plan describing her experience and the benefits of her business; evidence relating to her work in the field; letters of recommendation; and industry reports and articles showing the national importance of her endeavor and the shortage of professionals in her field. Upon de novo review, we find the Petitioner did not demonstrate that her proposed endeavor satisfies the national importance element of *Dhanasar's* first prong, as discussed below.

The standard of proof in this proceeding is a preponderance of evidence, meaning that a petitioner must show that what is claimed is "more likely than not" or "probably" true. *Matter of Chawathe*, 25 I&N Dec. at 375-76. To determine whether a petitioner has met the burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.*; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989). Here, the Director properly analyzed the Petitioner's documentation and weighed the evidence to evaluate the Petitioner's eligibility by a preponderance of evidence.

The Petitioner argues on appeal that the national importance of her proposed endeavor is evident through its proposed economic and healthcare benefits to the United States, the Petitioner's professional experience and achievements, and the benefits of entrepreneurs.⁵ The Petitioner emphasizes on appeal her experience and achievements asserting, "[she] will help companies and clients as a Medical and Health Services Manager in the field of Health Care, while as an entrepreneur, she has strong experience managing few health centers, directly participating in financial administration, contracts, hiring and training of professions." She argues, "Due to the record of her business achievements and expertise throughout over eight . . . years of work experience, [the Petitioner] will successfully manage her business" helping "the [United States] stay competitive by bringing competitive services, helping develop the country, and producing income for the U.S. economy." (emphasis omitted). She argues her "direct knowledge of the medical industry will benefit any U.S. companies and individuals that need qualified professionals who possess expertise in medical areas and as a Cardiology [sic]." (emphasis omitted). On appeal, the Petitioner describes her medical

⁵ We note that the Petitioner's arguments in the appeal brief include language not associated with the Petitioner's proposed endeavor. For instance, in arguing the national importance of her proposed endeavor, the brief states, "As shown herein, the Appellant will help companies and clients . . . while also helping with the administrative tasks of operating a shoe company for disabled Americans, as well as shoes for those without disabilities." (emphasis added). The brief further states, "As shown, the U.S. is in high need of specialized plastic surgeons and medical professionals who have the tools and experience to deal with complex and diverse dental care issues, as explained above." (emphasis added).

education and her professional experience, credentials, and achievements as a physician to show “her expertise and credibility in the field” which will be highly beneficial to her business “and the broader national healthcare system in the United States.”

However, the Petitioner’s reliance on her academic credentials, professional experience, and achievements to establish the national importance of her proposed endeavor is misplaced. Her academic credentials, professional experience, and achievements relate to the second prong of the Dhanasar framework, which “shifts the focus from the proposed endeavor to the foreign national.” Matter of Dhanasar, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has national importance under Dhanasar’s first prong. To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement, we look to evidence documenting the “potential prospective impact” of her work. See *id.* at 889.

In Dhanasar, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. The record does not demonstrate that the Petitioner’s proposed endeavor will substantially benefit the field of healthcare, as contemplated by Dhanasar: “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field, such as those resulting from certain improved manufacturing processes or medical advances.” *Id.* The evidence does not suggest that the Petitioner’s sports medicine services business would impact the healthcare field more broadly.

The Petitioner argues on appeal that her business plan and professional statement show that her proposed endeavor has national importance based on potential economic and healthcare benefits. The business plan indicates that the business is expected to generate jobs for U.S. workers in underserved business areas; to improve the economy for U.S. citizens in Florida, New Jersey, and California; and to enhance healthcare services in the United States. However, the Petitioner has not provided corroborating evidence to support her claims that her business’ activities stand to provide substantial economic and healthcare benefits to Florida, New Jersey, California, and the United States. The Petitioner’s general claims that her sports medicine services business will benefit the U.S. economy and enhance healthcare has not been established through independent and objective evidence. The Petitioner’s statements are not sufficient to demonstrate her endeavor has the potential to provide economic and healthcare benefits to Florida, New Jersey, California, and the United States. The Petitioner must support her assertions with relevant, probative, and credible evidence. See Matter of Chawathe, 25 I&N Dec. at 376. Also, without sufficient documentary evidence that her proposed job duties as a medical and health services manager for her sports medicine business would impact the healthcare industry more broadly, rather than benefiting her business and her proposed clients, the Petitioner has not demonstrated by a preponderance of the evidence that her proposed endeavor is of national importance.

The business plan describes the Petitioner’s intended ownership and financial investment in the business; establishment of offices in underutilized business areas of Florida, New Jersey, and California; the business’ products and services; an analysis of the demand for specialized doctors in the United States; an industry and market analysis of the sports medicine practitioners; and the business’ proposed marketing, staffing, and financial forecasts. The business plan briefly indicates that it proposes to establish the business in underutilized business zones, claiming this will generate

jobs for U.S. workers in these underutilized areas, will improve the wages and working conditions for U.S. workers, and will improve the healthcare of U.S. citizens. The business plan projects that in five years the business will hire 43 direct employees, pay wages of 6.84 million dollars, and generate 12.2 million dollars in revenue for the local communities. However, the record does not sufficiently detail the basis for its financial and staffing projections, or adequately explain how these projections will be realized.

The Petitioner has not provided corroborating evidence demonstrating that her business' future staffing levels and business activities stand to provide substantial economic benefits to underutilized areas of Florida, New Jersey, California, and the United States. While the Petitioner expresses her desire to contribute to the United States and its underutilized areas, she has not established with specific, probative evidence that her endeavor will have broader implications in the healthcare field, will have significant potential to employ U.S. workers, or will have other substantial positive economic effects in economically underutilized areas. The Petitioner must support her assertions with relevant, probative, and credible evidence. See *id.* Even if we were to assume everything the Petitioner claims will happen, the record lacks evidence showing that creating 43 direct jobs and paying wages of 6.84 million dollars and generating 12.2 million dollars in revenue over a five-year period rises to the level of national importance.

The Petitioner further claims on appeal that the national importance of her proposed endeavor is evidenced in industry reports and articles. She argues that the reports and articles show the need for medical professionals to assist with healthcare issues, such as obesity, an aging U.S. population increases the need for workers, the importance of specialized doctors, the expected growth of the healthcare industry, and the importance of immigrant entrepreneurs. The reports and articles relate to the economic benefits of immigrants and entrepreneurship; expected growth and labor shortages in the healthcare industry; healthcare and social assistance in the United States; global healthcare outlook; and health and wellness spas. We recognize the importance of the healthcare industry and related careers, and the significant contributions from immigrants who have become successful entrepreneurs; however, merely working in the healthcare field as a medical and health services manager or starting a sports medicine services business is insufficient to establish the national importance of the proposed endeavor. Instead, we focus on the “the specific endeavor that the foreign national proposes to undertake.” See *Matter of Dhanasar*, 26 I&N Dec. at 889.

In *Dhanasar*, we noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” *Id.* We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” *Id.* at 890. The industry reports and articles submitted do not discuss any projected U.S. economic impact or job creation specifically attributable to the Petitioner’s proposed endeavor.

We further note that the record includes an opinion from [redacted] assistant professor of clinical and administrative sciences and director of experiential education at [redacted] University in California. The opinion includes an analysis of the national importance of the Petitioner’s proposed endeavor stating, “the United States would greatly benefit from the expertise and skills of an experienced Medical and Health Services Manager such as [the Petitioner], who has

extensive knowledge and expertise in the medical field. Her work has both substantial merit and national importance.” In support of the Petitioner’s proposed endeavor having national importance, the opinion explains the importance of medical and healthcare professionals, the shortage of physicians in critical care medicine, the contribution of foreign-born doctors and medical professions on the U.S. healthcare system, and the availability of healthcare in Brazil. However, the opinion’s focus on the need for medical and healthcare professionals and how the Petitioner’s professional experience makes her well positioned to help the American healthcare industry with her professional skills does not demonstrate that the Petitioner’s specific endeavor may have a prospective impact in her field. The opinion does not focus on the Petitioner’s specific endeavor and it having a potential prospective impact on the U.S. economy, or in the field of her proposed endeavor. Simply stating that her background in medicine and healthcare would support an important industry and alleviate a shortage of workers in the healthcare industry is not sufficient to meet the “national importance” requirement under the Dhanasar framework.

The Petitioner does not demonstrate that her proposed endeavor extends beyond her business and her future clients to impact the field or any other industries or the U.S. economy more broadly at a level commensurate with national importance. Beyond general assertions, she has not demonstrated that the work she proposes to undertake as the owner and medical and health services manager of her proposed sports medicine services business offers original innovations that contribute to advancements in her industry or otherwise has broader implications for her field. The economic and healthcare benefits that the Petitioner claims depend on numerous factors, and the Petitioner did not offer a sufficiently direct evidentiary tie between her proposed work as a medical and health services manager for her sports medicine services business and the claimed economic and healthcare benefits.

Because the documentation in the record does not sufficiently establish the national importance of the Petitioner’s proposed endeavor as required by the first prong of the Dhanasar precedent decision, she has not demonstrated eligibility for a national interest waiver. Since the identified basis for denial is dispositive of the Petitioner’s appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments regarding her eligibility under the second and third prongs. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we find that the Petitioner has not established eligibility for a national interest waiver as a matter of discretion.

The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.